

ST 96-12

Tax Type: SALES TAX

Issue: Statute of Limitations Application

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

| | | | |
|---------------------------|---|----------|------------------|
| TAXPAYER |) | | |
| Taxpayer |) | | |
| |) | Docket # | |
| versus |) | IBT # | |
| |) | | Claim for Credit |
| THE DEPARTMENT OF REVENUE |) | | |
| OF THE STATE OF ILLINOIS |) | | |

RECOMMENDATION FOR DISPOSITION

APPEARANCES: ATTORNEY FOR THE TAXPAYER

SYNOPSIS:

ON JANUARY 15, 1993, TAXPAYER, (THE "TAXPAYER") BY AND THROUGH HIS REPRESENTATIVE, FILED AN ILLINOIS CLAIM FOR VERIFIED OVERPAYMENT WITH THE ILLINOIS DEPARTMENT OF REVENUE (THE "DEPARTMENT") FOR THE PERIOD "OF JANUARY, 1988 DEPOSIT OF \$27,500 APPLIED TO SEPTEMBER, 1994 USE TAX PURSUANT TO FEBRUARY 6, 1992 ADMINISTRATIVE LAW JUDGE DECISION LEAVING A BALANCE OF \$7,122". THE DEPARTMENT DENIED THE CLAIM FINDING IT WAS BARRED BY THE STATUTE OF LIMITATIONS. THE TAXPAYER PROTESTED THE DENIAL AND REQUESTED A HEARING. AT THE HEARING IT WAS ESTABLISHED THAT THE TAXPAYER HAD VOLUNTARILY PAID THE AMOUNT AS A "DEPOSIT" AGAINST FUTURE POSSIBLE TAX LIABILITY AND THAT HE HAD NOT FILED TIMELY FOR THE CREDIT. IT IS

THEREFORE RECOMMENDED THAT THE DIRECTOR OF THE DEPARTMENT UPHOLD THE DENIAL OF THE CLAIM.

FINDINGS OF FACT:

1. THE DEPARTMENT'S PRIMA FACIE CASE WAS ESTABLISHED BY THE ADMISSION INTO EVIDENCE OF THE TENTATIVE DETERMINATION OF CLAIM AS AUTHORIZED PURSUANT TO 35 ILCS 105/20. (DEPT. EX. NO. 2)

2. THE TAXPAYER RECEIVED A NOTICE OF TAX LIABILITY FROM THE DEPARTMENT ON DECEMBER 26, 1987 FOR \$67,747.25. (PETITIONER'S EX. NO. 2)

3. THE DEPARTMENT RECEIVED A CHECK FOR \$27,500.00 FROM THE TAXPAYER ON JANUARY 15, 1988 WITH A LETTER PROTESTING THE NOTICE OF TAX LIABILITY. THE LETTER STATED THAT THE FUNDS WERE BEING "DEPOSITED WITH YOU AS AGAINST ANY POTENTIAL TAX LIABILITY FOR PURPOSES OF CESSATION OF ACCRUING OF FURTHER INTEREST IN THIS CAUSE SHOULD ANY TAX LIABILITY BE FOUND. SAID DEPOSIT IS NOT AN ADMISSION OF LIABILITY ON BEHALF OF SAID TAXPAYER,...". (PETITIONER'S EX. NO. 3)

4. ON FEBRUARY 22, 1988 THE DEPARTMENT ACKNOWLEDGED THE RECEIPT OF THE CHECK AND ADMONISHED THE TAXPAYER THAT "YOU MUST FILE A CLAIM FOR CREDIT WITHIN THE STATUTORY PERIOD TO PERMIT PAYMENT OF ANY AMOUNT DETERMINED TO BE DUE YOU AT THE COMPLETION OF THE HEARING". (PETITIONER'S EX. NO 4)

5. ON JULY 25, 1990, A HEARING WAS HELD REGARDING THE NOTICE OF TAX LIABILITY, FOLLOWING WHICH THE LIABILITY WAS REDUCED TO \$20,378.00. THE FINAL ASSESSMENT IN THAT AMOUNT WAS ISSUED ON FEBRUARY 6, 1992. (PETITIONER'S EX. NO. 10)

6. THE TAXPAYER WROTE TO THE DEPARTMENT TO ASCERTAIN THE PROPER PROCEDURE GET THE REFUND OF THE ADDITIONAL \$7,122.00, PAID ON JANUARY 15, 1988. (PETITIONER'S EX. NO. 12)

7. THE DEPARTMENT RESPONDED TO THE LETTER DIRECTING THE ATTENTION OF THE TAXPAYER TO THE CORRESPONDENCE FROM THE DEPARTMENT ON FEBRUARY 22, 1988 IN WHICH THE DEPARTMENT HAD ADMONISHED THE TAXPAYER TO TIMELY FILE A CLAIM FOR CREDIT. (PETITIONER'S EX. NO. 13)

8. THE TAXPAYER REITERATED HIS CLAIM THAT THE DEPOSIT MADE JANUARY 15, 1988 WAS NOT AN ERRONEOUS PAYMENT OF TAX BUT ONLY A DEPOSIT TOWARD ANY LIABILITY EVENTUALLY DETERMINED. (PETITIONER'S EX. NO. 14)

9. THE DEPARTMENT RECEIVED AN ST-6 CLAIM FOR VERIFIED OVERPAYMENT FROM THE TAXPAYER ON JANUARY 19, 1993. (DEPT. EX. NO. 1; PETITIONER'S EX. NOS 18 AND 19)

10. ON OCTOBER 18, 1993, THE DEPARTMENT DENIED THE CLAIM BASED UPON THE EXPIRATION OF THE STATUTE OF LIMITATIONS. (DEPT. EX. NO. 1)

11. IN THE PROTEST DATED NOVEMBER 8, 1993 TO THE TENTATIVE DENIAL OF CLAIM, THE TAXPAYER STATED AGAIN THAT THE PAYMENT WAS A DEPOSIT AGAINST POTENTIAL LIABILITY AND NOT ANY ADMISSION OF TAX DUE. (DEPT EX. NO. 3; PETITIONER'S EX. NO. 25)

CONCLUSIONS OF LAW:

THE ILLINOIS COMPILES STATUTES HAVE SPECIFIC PROVISIONS FOR THE IMPOSITION OF TAXES AND THE PROCEDURES FOR FILING A CLAIM FOR CREDIT OR REFUND. THE APPLICABLE STATUTES IN THIS CASE CAN BE FOUND AT 35 ILCS 105/3, 35 ILCS 105/19 AND 35 ILCS 105/21 WHICH STATE:

§ 3. TAX IMPOSED. A TAX IS IMPOSED UPON THE PRIVILEGE OF USING IN THIS STATE TANGIBLE PERSONAL PROPERTY PURCHASED AT RETAIL FROM A RETAILER,...

§ 19. IF IT SHALL APPEAR THAT AN AMOUNT OF TAX OR PENALTY OR INTEREST HAS BEEN PAID IN ERROR HEREUNDER TO THE DEPARTMENT BY A PURCHASER, AS DISTINGUISHED FROM THE RETAILER, WHETHER SUCH AMOUNT BE PAID THROUGH A MISTAKE OF FACT OR AN ERROR OF LAW, SUCH PURCHASER MAY FILE A CLAIM FOR CREDIT OR REFUND WITH THE DEPARTMENT...

ANY CLAIM FILED HEREUNDER SHALL BE FILED UPON A FORM PRESCRIBED AND FURNISHED BY THE DEPARTMENT...

§ 21. AS TO ANY CLAIM FOR CREDIT OR REFUND FILED WITH THE DEPARTMENT ON AND AFTER JANUARY 1 BUT ON OR BEFORE JUNE 30 OF ANY GIVEN YEAR, NO AMOUNT OF TAX OR PENALTY OR INTEREST ERRONEOUSLY PAID (EITHER IN TOTAL OR PARTIAL LIQUIDATION OF A TAX OR PENALTY OR INTEREST UNDER THIS ACT) MORE THAN 3 YEARS PRIOR TO SUCH JANUARY 1 SHALL BE CREDITED OR REFUNDED, AND AS TO ANY SUCH CLAIM FILED OR AND AFTER JULY 1 BUT ON OR BEFORE DECEMBER 31 OF ANY GIVEN YEAR, NO AMOUNT OF TAX OR PENALTY OR INTEREST ERRONEOUSLY PAID (EITHER IN TOTAL OR PARTIAL LIQUIDATION OF A TAX OR PENALTY OR INTEREST UNDER THIS ACT) MORE THAN 3 YEARS PRIOR TO SUCH JULY 1 SHALL BE CREDITED OR REFUNDED....

TAXING STATUTES ARE TO BE STRICTLY CONSTRUED AND THEIR LANGUAGE IS NOT TO BE EXTENDED OR ENLARGED BY IMPLICATION BEYOND THE CLEAR IMPORT. INGERSOL MILL. MACH. CO. V. DEPARTMENT OF REVENUE, 405 ILL. 367 (1959); BABCOCK V. NUDELMAN, 367 ILL. 626 (1938)

THE OBLIGATION TO PAY A TAX OR FEE IS ONE CREATED SOLELY BY STATUTE. ACCORDINGLY, THE RIGHT TO A REFUND OR CREDIT CAN ONLY ARISE AS PROVIDED BY LEGISLATION. PEOPLE EX REL. EITEL V. LINDHEIMER, 371 ILL. 367 (1939); JONES V. DEPARTMENT OF REVENUE, 60 ILL.APP.3D 886 (1ST DIST. 1978)

IN THE INSTANT CASE, THE TAXPAYER MADE A VOLUNTARY PAYMENT FOR THE POSSIBLE IMPOSITION OF TAXES TO THE DEPARTMENT PURSUANT TO THE NOTICE OF TAX LIABILITY. THE USE TAX ACT HAS NO PROVISION FOR A DEPOSIT. THE TAXPAYER WAS NOTIFIED IN A TIMELY MANNER BY THE DEPARTMENT THAT HE WOULD HAVE TO FILE A CLAIM FOR CREDIT WITHIN THE STATUTE OF LIMITATIONS TO RECEIVE

ANY REFUND OF OVERPAYMENT OF THE TAXES THAT HE HAD PAID. THIS HE FAILED TO DO.

THE BRIEF FOR THE TAXPAYER, FILED BY HIS ATTORNEY WITH THE DEPARTMENT ON SEPTEMBER 27, 1995, BASES HIS FOUR ARGUMENTS REGARDING THE RIGHT OF THE TAXPAYER TO THE REFUND ON THE FACT THAT A "DEPOSIT" WAS MADE WITH THE DEPARTMENT. THE BRIEF FAILS TO REVEAL A STATUTORY PROVISION FOR A "DEPOSIT" MADE WITH THE DEPARTMENT AND REFUND OF SUCH "DEPOSIT". WITHOUT SUCH PROVISION, THE DEPARTMENT HAS NO AUTHORITY TO REFUND THE AMOUNT IN QUESTION.

I THEREFORE RECOMMEND THAT THE DIRECTOR OF THE DEPARTMENT UPHOLD THE NOTICE OF TENTATIVE DETERMINATION OF CLAIM IN ITS ENTIRETY.

RESPECTFULLY SUBMITTED,

BARBARA S. ROWE
ADMINISTRATIVE LAW JUDGE
FEBRUARY 27, 1996